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08/428,918	04/25/1995	ROBERT R. REAVER	REAV-35008	5672

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EXAMINER

ROWAN, KURT C

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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MAILED

APR 27 2009

CENTRAL REEXAMINATION UNIT

In re Application of	:	
Robert R. Reaver et al.	:	DECISION
Application No. 08/428,918	:	TERMINATING
Filed: April 25, 1995	:	REISSUE PROCEEDING
Atty. Docket No.: REAV-35008	:	

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 5,207,018, for which patent the present application requests reissue, and (2) the failure of applicants to respond to the Order to Show Cause mailed by the Office March 9, 2009.

BACKGROUND

1. Reissue application no. 08/428,918 ("the '918 reissue application") was filed on April 25, 1995, for reissue of U.S. Patent No. 5,207,018 ("the '018 patent") issued September 28, 2004.
2. The Image File Wrapper record for the '918 reissue application reveals that a paper titled "Amendment" was filed on July 5, 2007, and that the prosecution of the application was not closed.
3. The Office's financial records reveal that the 11.5 year maintenance fee due by May 4, 2005 (the end of the maintenance fee grace period), was not paid.
4. The '018 patent expired at midnight on May 4, 2005, for failure to pay the 11.5 year maintenance fee due.¹ See: <http://www.uspto.gov/web/offices/com/sol/og/2005/week26/patexp.html>.
5. On March 9, 2009, an Order to Show Cause was mailed to applicants, setting a 30-day period for a response showing sufficient cause why the Office should not terminate the present reissue proceeding. The Order makes clear that a failure by

¹ See: MPEP § 2506, third paragraph.

applicants to respond to the show cause order within the set 30-day period will result in the termination of the present reissue proceeding by default.

6. No response to the March 9, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired.

DECISION

As pointed out above, no response to the March 9, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired. In addition, there is no record of a petition addressing the failure to pay the 11.5 year maintenance fee, as would be required in order to reinstate the '018 patent.

When a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, **when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; emphasis added]

Since the '018 patent expired for failure to pay the requisite maintenance fee, and applicants have not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application is hereby terminated. Accordingly, the Technology Center is to proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

CONCLUSION

1. The present reissue application is hereby terminated.
2. Jurisdiction over the reissue application file is being forwarded to Technology Center Art Unit 3643 for processing the application as an abandoned application.
3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration